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T.R.A. DOCKET ROOM

November 26, 2003

Chairman Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: Complaint of US LEC of Tennessee Inc. Against Electric Power Board of
Chattanooga
Docket No.: 02-00562

Dear Chairman Tate:

Please accept the attached testimony of Michael G. Moeller as a substitute for the testimony of Mr. Moeller filed on November 21, 2003. The earlier version did not include some last minute editorial revisions to the testimony. Copies of the revised testimony have been furnished to all parties.

Thank You.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:


Henry Walker

HW/pp
Enc.

1 Furthermore, I have been personally present on several occasions in which
2 representatives of EPB Telecom represent themselves as being from EPB and state that
3 “we have been around for seventy years.” In addition, several telecommunication
4 prospects and customers have stated to me that EPB has been around for 70 years. Some
5 have even stated that EPB has the money they need since they are the power company
6 and they said that the CLECs are going out of business. In my opinion, EPB’s goal is to
7 give the impression that EPB’s telecommunications services are offered by the same
8 entity that provides electric services.

9 **Q. DOES THE USE OF THE EPB NAME GIVE EPB TELECOM AN ADVANTAGE**
10 **OVER OTHER LOCAL EXCHANGE CARRIERS?**

11 A. Obviously it does. EPB Telecom hardly needs to advertise because the name EPB is
12 already pervasive in Chattanooga. It is on manhole covers, electric trucks and equipment
13 throughout the city. This name recognition was paid for on the backs of EPB electric rate
14 payers and should not be allowed to subsidize EPB’s telecommunications operations.

15 **Q. HOW IS EPB TELECOM VIEWED BY THE PRESS AND BY PUBLIC**
16 **OFFICIALS IN CHATTANOOGA?**

17 A. In article after article, EPB Power or EPB Telecom are simply referred to as EPB.
18 The Mayor does not distinguish between the telecommunications and power divisions;
19 neither does the press. According to one news article, the Electric Power Board
20 shortened its name to “EPB” for the very purpose of being able to brand all its services
21 with the EPB name. MGM Exhibit 1. The strategy has apparently worked. The public
22 only sees EPB, not EPB Power or EPB Telecom.

1 **Q. DOES THE ADVERTISING AND MARKETING OF EPB TELECOM**
2 **DEMONSTRATE THAT EPB IS LEVERAGING ITS NAME AND REPUTATION**
3 **TO SELL TELEPHONE SERVICE?**

4 A: Yes. Attached to my testimony are several blatant examples taken from EPB's web site
5 and advertising of how EPB Telecom is being subsidized by using the EPB name. The
6 first page of the EPB web site announces that EPB is now "more than a power company"
7 and is able to provide both electric and telecommunications services to its customers.
8 MGM Exhibit 2. EPB's "Mission" is to provide telephone service with the same
9 commitment to customer service with which EPB has provided electric service. MGM
10 Exhibit 3. Another page on the web site states that EPB Telecom supposedly has
11 "Reliability" because EPB has been able to provide "reliable electric power service" and
12 "everything we've learned over the years about keeping the lights on ... has been put to
13 good use in our telecommunications delivery. So you can be sure your phone service will
14 be as reliable as your power service." MGM Exhibit 4. EPB Telecom is obviously trying
15 to differentiate itself from other CLECs solely on the basis of its affiliation with EPB
16 Electric.

17 **Q. WHAT ABOUT JOINT MARKETING OF EPB AND EPB TELECOM IN**
18 **ADVERTISING?**

19 A. Attached to my testimony is one advertisement which states, "Hear the one about the
20 power company that got into the phone biz? Yeah, at first people were shocked. Then
21 they couldn't stop talking." The printed ad states at the bottom, "Imagine your phone and
22 power service coming from one source. We're thinking about EPB -- the power
23 company you can expect more from." MGM Exhibit 5.

1 An ad for EPB in the Yellow Pages, listed under "Electric Contractors," states,
2 "Now serving your electric power and telecommunication needs. EPB. More Current
3 Than Ever." MGM Exhibit 6.

4 Another advertisement touts the "EPBT advantage." It says, "Our name carries
5 over 70 years of trust, service and dedication." MGM Exhibit 7. Finally, there is one
6 advertisement that implies that choosing EPB for telephone service "is choosing a much,
7 much brighter future for our own city" supposedly because "EPB Telecommunications'
8 reliable network solutions will benefit Chattanooga businesses and the community as a
9 whole." MGM Exhibit 8.

10 **Q. WHAT ABOUT PRESS RELEASES?**

11 A. When EPB Telecom reached its second anniversary, EPB issued a press release, dated
12 July 16, 2001. It is still on the EPB web site. It quotes a telephone customer as saying
13 that the reason he chose EPB Telecom was because of "EPB's demonstrated commitment
14 to promoting local business." The customer states, "EPB already has a superb reputation
15 in Chattanooga. Few companies offer the same dedication to both community and
16 customer service that EPB does and that philosophy has carried into their
17 Telecommunications Division." MGM Exhibit 9.

18 **Q. WHAT DO YOU CONCLUDE FROM ALL OF THIS?**

19 A. EPB is clearly using its name, reputation, and financial stability as a monopoly electric
20 power company to subsidize its telephone business. They are not even trying to follow
21 their "Code of Conduct" which this agency required them to adopt. The Code states that
22 joint marketing of electric and telephone services is permitted "provided that the
23 customer is informed of the separate identities of each [division]." In these examples I
24 have given, EPB fails to remind the customer of the separate identities of the two

1 divisions. To the contrary, the marketing emphasizes that both services come from the
2 same entity.

3 **Q. IF EPB TELECOM DISCONTINUED ALL REFERENCES TO EPB AND EPB**
4 **DISCONTINUED ALL REFERENCES TO EPB TELECOM, WOULD THAT**
5 **SOLVE THE PROBLEM?**

6 A. No. The real issue is the use of the name "EPB Telecom" in the marketing EPB's
7 telecommunications services. As long as "EPB" is in the name, customers will be
8 reminded that their telephone service and electric service come from the same source.
9 That kind of subsidization gives EPB Telecom a built-in advantage over any other
10 competing local telephone company. State law prohibits EPB Electric from subsidizing
11 its telephone business. There is no doubt that EPB is violating that statute. I've seen it
12 first hand.

13 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**


14 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 26th day of November, 2003.

Mark Smith, Esq.
Strang, Gletcher, Carriger, Walker, Hodge & Smith, PLLC
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One Union Square
Chattanooga, TN 37402-2514

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Henry Walker

chattanooga

ON THE MOVE

volume 1:2 spring 2000

Through Tech Talk

by Dr. Greg Sedrick

Strike Up The Bandwidth

'Who ya gonna call?' 'Who's on first?'

Have an existing business or intend to build one? You need to consider the next wave of technology that will be focused on *device integration*. You and your customers currently use several different appliances to access the Internet and television and radio programs. Ultimately, one appliance will do it all. It's just around the corner.

Likewise, the many sources of information and entertainment will be reduced dramatically, made possible not only by technology but also by the Telecommunications Act of 1996. The act begins: The goal of this new law is to let anyone enter any communications business - to let any communications business compete in any market against any other.(1)

This law was passed to stimulate competition. And so a scramble now is under way.

Even before the Act became law, it generated local interest and - interestingly - opposition. The City of Chattanooga, concerned that potential providers would tear up roads and easements to lay fiber and cable, passed a resolution opposing the Act.(2)

Despite these efforts, the Act did pass and has been undergoing further interpretation via local implementation laws. While the final impact is not completely known, it is resulting in a mix of new players. The growth of consumer desire for these services and the resulting potential profit have created new ventures, new partnerships and new competitors. *The rush is to expand the bandwidth to the consumer. Why?*

Bandwidth is the magic that brings digital information from one place to another. The larger the bandwidth, the faster signals can travel. Services utilizing video require the large amounts of bandwidth that can travel to your home and business via copper and aluminum cable, in light pulses through fiber optic cable and through the air in microwave or standard radio/cellular

signals. Hence the new competitors are those that have current access to these bandwidth carriers. Who are they?

Technological advances now have immediate and reverberating impacts on market responses. The AOL(3) Time Warner merger and the Microsoft judgment are two good examples. The local players no doubt change their strategy on a day-to-day basis.

Here is a listing of the local players and what they might be offering you.

1. BELLSOUTH - www.bellsouth.com standard and cellular phone service. Existing infrastructure via phone lines and microwave cell towers to reach nearly all our region's homes and businesses provides access to business and offers on-demand video service in Atlanta, Jacksonville, Orlando and New Orleans. Look soon for Chattanooga!
2. CDC - www.cdc.net Internet Service Provider (ISP) in business locally for many years. CDC has experience and an existing customer base in Internet services.
3. Chattanooga On-Line - www.chattanooga.net This ISP has been on line locally the longest and is host to the majority of current Chattanooga web sites. COL has experience in the business and an existing customer base; it will continue to partner with others to deliver this service to your site.
4. COMCAST - comcast.com Provides local cable TV and some digital music service. In other regions, Comcast also provides Internet services and telephone. This multibillion-dollar company specializes in broad bandwidth applications; it has expressed an interest in expanding locally.
5. EPB - www.epb.net Formerly known as the Electric Power Board, EPB is expanding services from electric utilities to telecommunications including Internet and telephone service. EPB officially reduced its name to three call letters to reflect this new business strategy. It has an advantage of possessing existing connections to all area residential and commercial facilities through its power lines. These power lines can carry bandwidth to supply more than electrical power. EPB already offers cable broadcasting services. Look to EBP to partner with one or several other firms to expand offerings.
6. NEXTLEC - www.nextlec.net "LEC" stands for Local Exchange Carrier. This new local firm is one of 11 LECs in the country. It has been investing heavily in 'dark fiber', fiber optics that are currently not in use but will allow for immediate expandability. Offering a full range of services (Internet, telecommunications and on-demand video), NextLec can deliver large bandwidth capacity. It needs to partner with another player to deliver to your site. They are up and running strong.

Some of these providers may merge; some may fold. The competition

is hot! Ironically, some of those who partner will be competitors for some other services.

How much bandwidth do you require? Streaming video requires a large amount of bandwidth and span of services. That's why Chattanooga State has a partnership with NextLec. A dynamic eCommerce site has similar requirements. Simple communication systems need much less. If you are unsure of your needs, visit Bill Gates' companion site for his text: *Business @ The Speed of Thought* (www.speedofthought.com) or *The Clickable Corporation* by business consulting firm Arthur Andersen (www.arthurandersen.com/clickable).

(1) www.fcc.gov/telecom.html
and
www1.whitehouse.gov/WH/EOP/OP/telecom/summary.html

(2) [www.chattanooga.gov/OrdReso/Resolutions%
201996/20876BillProtestTele](http://www.chattanooga.gov/OrdReso/Resolutions%201996/20876BillProtestTele)

(3) America Online

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Green Power

Telecommunications

Weather Watch



Welcome to EPB.

We're more than a power company, we're a powerful resource dedicated to providing the services you depend on most at work and at home. With over 156,000 customers and more than sixty years experience in providing reliable, low-cost electric power, we're one of the nation's largest publicly-owned utilities, and one of the fastest growing Telecommunications companies. What can we do for you today?

**BREAKING
NEWS**

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Mission

EPB was founded to ensure the availability of reliable, low-cost electric power service for Chattanooga area residents, industry and businesses. But with deregulation around the corner, EPB is becoming more than a power company. We're becoming a powerful company--an innovative, progressive company you can depend on for a wide range of reliable, affordable services. But whether you have electric, telecommunications or other services from EPB, one thing will never change--the way we've always put the needs of our customers first. It's a way of doing business that's served us well for more than six decades--a philosophy which is, indeed, more current than ever.

[Home Electric Power](#) [Business Electric Power](#) [Telecommunications](#) [Weather Watch](#)

RELIABILITY

When it comes to providing reliable electric power service, EPB is one of the leading utilities in the country. And EPB Telecommunications is no different. Everything we've learned over the years about keeping the lights on — including redundant outage prevention systems, automated restoration systems and maintaining a crack linemen crew — has been put to good use in our telecommunications delivery. So you can be sure your phone service will be as reliable as your power service. And that's saying something.

[HOME](#)

Call 423-648-1500 for 24-hour Customer Service.

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636 MARKET ST. 756-2706

(Please See Our Display Ad This Page)

(Please See Our Ad On Inside Front Cover)

Service

1120 W Mississippi Av Chattanooga 756-6100

Energy Services LLC 811 Broad St 266-1885

North Georgia Electric Membership Corporation

3368 Battlefield Pkwy Ft Ogle 866-2231

Wattco Energy Cooperative

9931 Highway 58 Ooltewah 344-8382

Electric Contractors

AA Electric Company 622-6544

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(Please See Our Display Ad Page 259)

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108 Cedar Ln 892-2382

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Appalachian Electric

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Appalachian Electric 842-7006

Arp George W Electric Co

3231 Gunbarrel Rd 894-1879

ASAP Electric Company

3200 Dodds Av Chattanooga 624-6410

Barnett Electric Co

2947 Corral Rd Signal Mountain 886-4692

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Berthart W E 5858 Grubb Rd Hixson 877-1909

CB Electric 8740 Highway 58 Harrison 344-8870

City Electric Co

729 A James Blvd Sgml Mtn 886-6966

COMBS ELECTRIC CO

4240-A Benton Dr 698-6936

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"OUR PRICES WON'T SHOCK YOU!"

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If No Answer 320-9189

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4001 Industry Dr 894-4336

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(Classification Continued Next Page)



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Electric Medic Service Company

Chattanooga's Residential Specialist For Over 25 Years

New Home Wiring
Circuits Added
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Service Upgrades
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Fully Insured

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Chattanooga

Free Estimates

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Hixson, Soddy Daisy

870-2212
East Brainerd
Ooltewah, Harrison

266-1706
Dayton, Spring City
Rhea County



DIRECTIONS

in the Community
Interest Section.

The Real
Yellow Pages®



the EPBT *advantage*

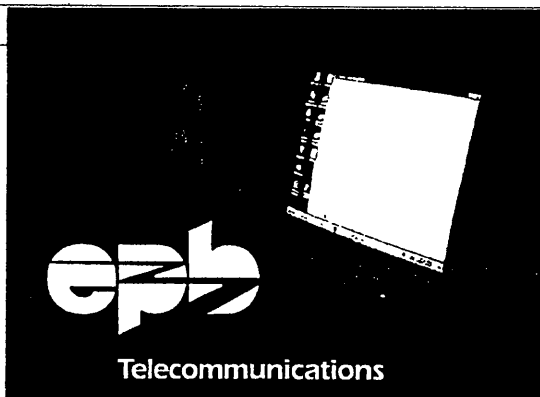
EPB has a long tradition of serving the Chattanooga Community.

Our name carries over 70 years of trust, service and dedication.

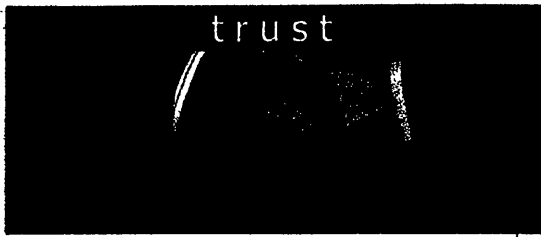
*EPB Telecommunications offers the same level of commitment to
Chattanooga area businesses.*

EPB Telecommunications... we're here, and we're here to stay.

- **Local Representation**
- **Easy to Read Billing**
- **Vendor Reduction**
- **T-1 Facilities**
- **No Hidden Fees**
- **No Hidden Line Charges**
- **No Installation Cost When Adding Lines or Features**
- **Local Dialtone Provided By Our Chattanooga Switch**



LOCAL LEGACY



What is in this for you?

Faster, easier access to the world, competitive voice and data from a proven and trusted local source.

Positive side-effect?
That would be
**sustaining
Chattanooga.**



May 6, 1882 was the first day in the history of electric power in Chattanooga. At 8 p.m., 25 city streetlights were lit in what was called a "blaze of glory." We were the south's first city with electric street lighting.

Now Chattanooga has taken another great leap forward in technology. **EPB Telecommunications** has developed an extraordinarily powerful telecommunications network to serve the businesses of this area. This source for advanced voice and data services has all of the solid reliability, local accountability and community leadership as **EPB**, its parent division. Our next-generation fiber-optic network is the system backbone, engineered for both robust growth and unsurpassed recoverability.

EPB Telecommunications' reliable network solutions will benefit Chattanooga businesses and the community as a whole. Choosing **EPB Telecommunications** is choosing a much, much brighter future for our own city.



Telecommunications

PICTURESQUE VIEW
M. CHATTANOOGA
POINT OF LOOKOUT
OVE THE CLOUDS
THROUGH WAUHA



BusinessNews

Survival of the Fittest - EPB Telecommunications' 2nd Year Monday, July 16, 2001

Business Articles

Process Improvement - Its in
the Details

Starting a new business has never been easy – and in the often fly-by-night, dot.com-minded world of the new economy, keeping a start-up alive is more challenging than ever. Locally, high levels of competition within the telecommunications market alone have created high turnover and buy-out rates among smaller start-ups. So as EPB Telecommunications reaches its first year of business and its first million dollars in revenues, the company has much to celebrate.

“Competition in this area is much higher than in most cities of comparable size,” says EPB Telecommunications Senior Vice President Bill Chapman. “A lot of that is due to our proximity to Atlanta, and the fact that we’re sitting right in the midst of an extremely fast-growing region. Last year Chattanooga was named as one of the top fifty cities for attracting new business. It’s this kind of economic growth that is creating greater need for additional telecommunications service options – and in turn creating greater competition among providers,” he explains.

EPB Telecommunications’ growth, which includes a staffing increase of twenty-eight and a customer base that expands by an average of 70 each month, not to mention the existing 700 customers and 4,700 lines already in service, has everything to do with its combination of strong customer relations and highly-competitive product. “When we launched last year, the small and medium size business community was more than ready for telecommunications services designed specifically to cater to their needs,” says Chapman. “The one thing we hear time and again from our customers is how much they appreciate – and enjoy – knowing there’s someone who understands exactly what their business needs are, and who will go the extra mile to put them in place. Better yet, that someone is the same person, every time.”

But personal service is only half the equation that has made EPB Telecommunications successful thus far. Providing telecommunications services specifically designed for businesses utilizing between one and twenty-five lines, and making those services highly cost-effective in the process, is the other half. “Many of our larger competitors just don’t have the resources to cost-effectively serve customers with under twenty-five lines,” says Chapman. “That’s really been our niche so far, because there are so many businesses in Chattanooga that need this type of tailor-made service.”

“Addressing the needs of Chattanooga’s business community is one of the fundamental elements of our core business philosophy,” says EPB President Harold DePriest. “When we launched the

Telecommunications Division last year, we made a long-term commitment to better serve local businesses, and we have dedicated all of our available resources to building a sound telecommunications business that is strong enough and stable enough to grow with the needs of its customers.”

And according to Blair Carter, president of Carter Distributing, EPB’s demonstrated commitment to promoting local business played a significant role in his decision to switch to EPB Telecommunications. “EPB already had a superb reputation in Chattanooga,” he explains. “Few companies offer the same dedication to both community and customer service that EPB does, and that philosophy has carried over into their Telecommunications Division. When I’d call my previous provider, I’d usually get an answering service and rarely a return call. The EPB Telecommunications team came out immediately to assess our needs, designed our system and converted our service right on schedule, and their follow-up has been impeccable. The whole transition was seamless, and we are already witnessing a significant reduction in our telecommunications expenses.”

In addition to the acquisition of new customers, EPB Telecommunications’ growth is also due in large part to the continued expansion of existing clients. Over the past year, many existing customers have added an average of 1-2 lines, acquired Internet service through the company’s strategic alliance with Chattanooga Data Connection, or made even more significant service additions to their telecommunications networks. The secret, says Chapman, is maintaining a successful balance of product and service: “We keep a keen eye on what existing customers need for the growth of their own businesses. We try to anticipate those needs, then work to provide resources that exceed them. After all, as our customers grow their businesses, we grow ours.”

△ Top